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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorney for Plaintiff
Zhouhu Shen

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JSW

COMPLAINT

CV 08

1614

Zhouhu Shen

Case No.

Plaintiff,

v.

Michael Mukasey, United States Attorney
General;
Michael Chertoff, Secretary of the
Department of Homeland Security;
Emilio T. Gonzalez, Director of United States
Citizenship and Immigration Services;
Robert S. Mueller, Director of Federal
Bureau of Investigation,

PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF
MANDAMUS & DECLARATORY
JUDGMENT UNDER 28 U.S.C. § 1361

Immigration Case

Defendants.

Plaintiff, Zhouhu Shen, by and through her attorney of record, opens this lawsuit against the Defendants and will show this Court the following:

1. Plaintiff brings this case to compel action on the delayed processing of her N-400, *Application for Naturalization*. This application remains within the jurisdiction of the defendants who have improperly delayed and withheld action on this application to Plaintiff's detriment.

PARTIES

2. Plaintiff Zhouhu Shen is a lawful permanent resident of the United States who has applied for naturalization with the United States Citizenship and Immigration Services (“USCIS”). Plaintiff resides in Castro Valley, California, which is within the jurisdiction of this court.

3. Defendant Michael Mukasey is the United States Attorney General and this action is brought against him in his official capacity. Defendant has the authority to administer the oath of allegiance and is the sole authority to naturalize persons as citizens of the United States. Defendant Mukasey is also the head of the Department of Justice, which is the federal agency responsible for the Federal Bureau of Investigation and the National Name Check Program.

4. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (“DHS”), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act and its related regulations, which provide for the processing of naturalization applications.

5. Defendant Emilio T. Gonzalez is the Director of the USCIS, and this action is brought against him in his official capacity. Defendant Director is responsible for the overall administration of benefits and immigration services for the USCIS, including naturalization.

6. Defendant Robert S. Mueller, is Director of the Federal Bureau of Investigation (“FBI”), and this action is brought against him in his official capacity. The FBI is the law enforcement agency that conducts security clearances for U.S. government agencies, such as the Department of State and the USCIS. As will be shown, Defendant Mueller has yet to complete the security clearances on Plaintiff’s case.

JURISDICTION

7. Jurisdiction in this case is proper under 28 U.S.C. §§ 1331 and 1361, 5 U.S.C. §§ 551, *et seq.* and 701, *et seq.*, and 28 U.S.C. § 2201 *et seq.* Relief is requested pursuant to said statutes. Additionally, attorney fees and costs will be sought pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*

1 **VENUE**

2 8. Venue is proper in this honorable Court, pursuant to 28 U.S.C. § 1391(e), in that Plaintiff
3 may request a hearing on the matter in the district where Plaintiff resides.

4 **INTRADISTRICT ASSIGNMENT**

5 9. This lawsuit should be assigned to the San Francisco or Oakland Division of this court
6 because a substantial part of the event or omission which gives rise to this lawsuit occurred in
7 Alameda County.

8 **EXHAUSTION OF REMEDIES**

9 10. Plaintiff has exhausted her administrative remedies. Plaintiff has supplied the USCIS
10 with documents that clearly establish her eligibility to be naturalized as a citizen of the United
11 States. As will be demonstrated by the evidence, Plaintiff has followed up with inquiries and
12 requests to the pertinent administrative agencies attempting to expedite her delayed case.

13 **CAUSE OF ACTION**

14 11. Plaintiff is a lawful permanent resident (A 077 824 832) of the United States.

15 12. Plaintiff properly filed an N-400, *Application for Naturalization* with the USCIS on May
16 1, 2006 (**EXHIBIT 1**).

17 13. On January 22, 2008, Plaintiff contacted the USCIS to inquire about the status of her N-
18 400 application. The USCIS informed Plaintiff that processing on her case had been delayed
19 because her FBI background check had not been completed (**EXHIBIT 2**).

20 14. An examination is required for all naturalization applicants pursuant to 8 U.S.C. § 1446
21 and 8 C.F.R. § 335.2.

22 15. The defendants have yet to schedule an examination for Plaintiff.

23 16. Plaintiff has submitted sufficient information to the USCIS for it to schedule an
24 examination for Plaintiff's naturalization case.

25 17. The USCIS does not require any further documentation directly from the plaintiff in
26 order for it to schedule a naturalization examination.

27 18. 687 days have elapsed since the USCIS received Plaintiff's N-400 application.

28 19. Plaintiff has been greatly damaged by the delay in the processing of her naturalization

1 application:

2 (a) Plaintiff wishes to exercise her right to vote but has been disenfranchised due to the
3 delay in the processing of her application.

4 (b) Plaintiff is unable obtain a United States Passport, thus limiting her ability to travel.

5 (c) Plaintiff is unable to sponsor immigrant petitions on behalf of her family members
6 until her naturalization application is resolved.

7 20. Defendants, in violation of 28 U.S.C § 1361, have failed to complete the processing of
8 Plaintiff's N-400, a duty delegated to them by law.

9 21. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 706(1), are
10 unlawfully withholding action on Plaintiff's case and have unreasonably delayed action on
11 Plaintiff's case.

12 22. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 555(b), are
13 unlawfully delaying action on Plaintiff's case and have failed to complete the adjudicative
14 functions delegated to them by law within a reasonable time.

15 **PRAYER**

16 WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays
17 that the Defendants be cited to appear and that, upon due consideration, the Court enter an order:

18 (a) requiring the Defendants to schedule a naturalization examination within 60 days of
19 receiving the Court's order;

20 (c) award reasonable attorney's fees and costs under the Equal Access to Justice Act;

21 (d) grant any other relief at law and in equity as justice may require.
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1 Dated: March 18, 2008

Respectfully Submitted,

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4 Justin Fok, CA Bar No. 242272
Attorney for Plaintiff

EXHIBIT LIST

- Exhibit 1: Plaintiff's N-400 receipt notice
- Exhibit 2: The USCIS letter dated January 23, 2008 informing Plaintiff of delay in processing.

EXHIBIT 1

THE UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE May 09, 2006
CASE TYPE: N400 Application For Naturalization			INS AN A 077 824 832
APPLICATION NUMBER WSC*001504637	RECEIVED DATE May 01, 2006	PRIORITY DATE May 01, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ZHOUHU SHEN [REDACTED] CASTRO VALLEY CA 94546		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s): Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.			
Our records indicate your personal information is as follows: Date of Birth: [REDACTED] Address Where You Live: [REDACTED] CASTRO VALLEY CA 94546			
Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.			
You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.			
IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.			
If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.			
If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.			
If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov . Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.			
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607- WSC001613426		INS Customer Service Number: (800) 375-5283 APPLICANT COPY 	

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EXHIBIT 2

U.S. Department of Homeland Security
USCIS
630 Sansome Street
San Francisco, CA 94111



**U.S. Citizenship
and Immigration
Services**

Wednesday, January 23, 2008

ZHOUHU SHEN
[REDACTED]

CASTRO VALLEY CA 94546

Dear Zhouhu Shen:

On 01/22/2008 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	Applicant or Petitioner
Attorney Name:	Information not available
Case type:	N400
Filing date:	05/04/2006
Receipt #:	WSC*001504637
Beneficiary (if you filed for someone else):	Information not available
Your USCIS Account Number (A-number):	A077824832
Type of service requested:	Outside Normal Processing Times

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

U.S. CIS - 01-23-2008 12:09 PM EST - WSC*001504637